

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
JOHN D. MURRAY,	:	DETERMINATION
OFFICER OF V & B SERVICE CENTER CORP.	:	
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1984	:	
through November 30, 1984.	:	

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Petitioner, John D. Murray, officer of V & B Service Center Corp., 42-08 65th Place, Woodside, New York 11377, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1984 through November 30, 1984 (File No. 806468).

A hearing was held before Arthur S. Bray, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York on May 9, 1990 at 3:00 P.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the Division of Taxation must attempt to collect sales and use taxes equally from all persons required to collect tax before it collects the entire amount due from petitioner.

FINDINGS OF FACT

During the period in issue, V & B Service Center Corp. ("V & B") was a business which repaired automobiles.

Petitioner, John D. Murray, began his association with V & B on October 17, 1983. At that time, he invested approximately \$15,000.00 in exchange for one-half of the stock of V & B. He also became the secretary- treasurer of V & B. The remaining stock was owned by Robert Reboredo who served as president of the corporation.

Petitioner did not become active in the business until the beginning of 1984. Thereafter, petitioner and Mr. Reboredo shared the repair work and the office functions. They also prepared bills, signed checks and purchased materials.

In or about July 1984, petitioner could no longer work because he was suffering from a hernia. In November 1984, he had an operation for the hernia.

In March 1985, petitioner returned to V & B and found that Mr. Reboredo had appropriated all of V & B's funds. As a result, petitioner gave his stock certificate back to Mr. Reboredo and stated he was leaving the business.

While petitioner was at V & B's premises, he learned that sales and use tax returns had not been filed for the period March 1, 1984 through November 30, 1984. Petitioner wanted his liabilities satisfied before he left V & B. Therefore, on March 30, 1985, he signed the sales and use tax returns for the periods in issue. It was petitioner's understanding that after the returns were prepared, they would be mailed with a check for the amount due.

The returns for the periods June 1, 1984 through August 31, 1984 and September 1, 1984 through November 30, 1984 were received by the Division on May 29, 1985. They reported that tax was due in the amounts of, respectively, \$956.43 and \$863.53. The record does not show when the return for the period March 1, 1984 through May 31, 1984 was filed. However, the return reported an amount due of \$1,567.17. None of the sales and use tax returns during the period in issue included a remittance of tax.

The Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated March 20, 1987, to petitioner. The notice assessed sales and use taxes for the period March 1, 1984 through November 30, 1984 in the amount of \$3,387.13 plus penalty of \$846.75 and interest of \$1,179.93 for a total amount due of \$5,413.81. The amount of tax assessed corresponds with the amount of tax reported due on the sales and use tax returns of V & B during the period in issue.

During the period of time he was hospitalized, petitioner did not receive any money from V & B.

### SUMMARY OF PETITIONER'S POSITION

At the hearing, petitioner did not dispute that he was responsible for the taxes due from V & B. However, since V & B had another officer who was also responsible for taxes, petitioner argued that he was not responsible for more than one-half of the amount sought by the Division.

### CONCLUSIONS OF LAW

A. Section 1133(a) of the Tax Law provides, in part, that every person required to collect the taxes imposed by Article 28 of the Tax Law is personally liable for the tax imposed, collected or required to be collected under such law. It has been recognized under New York Law on repeated occasions that each person required to collect tax is equally liable for the unpaid tax (see, e.g., Matter of Roland G. Gray, State Tax Commn., June 19, 1986; Matter of Keith Pierpont, Officer of Tremania, State Tax Commn., October 21, 1983). Thus, the fact that one officer may also be liable for the tax in issue, does not relieve another officer of liability for the full amount of the tax (Matter of Roland G. Gray, supra; Matter of Keith Pierpont, Officer of Tremania, supra). Accordingly, while petitioner's feeling that it would be appropriate to divide the liability between himself and Mr. Reboredo is understandable, there is no basis to reduce the assessment because another officer may also be liable for the tax.

B. The petition of John D. Murray, officer of V & B Service Center Corp., is denied.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE